Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1248

THE ILLINOIS STATE BOARD OF ELECTIONS,
Defendant-Appellant,

vs.

SOCIALIST WORKERS PARTY, et al.,
Plaintiffs-Appellees.

Consolidated With

THE ILLINOIS STATE BOARD OF ELECTIONS,
Intervening Defendant-Appellant,

vs.

GERALD ROSE, et al., *Plaintiffs-Appellees,*

CHICAGO BOARD OF ELECTION COMMISSIONERS, et al.,
Defendant-Appellee.

On Appeal from the United States Court of Appeals for the Seventh Circuit

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEES' MOTION TO AFFIRM IN PART AND DISMISS IN PART

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STATUTE:

Chap. 46, Illinois Revised Statutes, (Election Code) § 10-2 .....

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ARGUMENT

The questions raised by this appeal are: 1) Whether the Court of Appeals can negate a state statute recently held constitutional by this Court in *Jackson* v. *Ogilvie*?; 2) whether a Court of Appeals can ignore the principle of law mandated by this Court in *Moore* v. *Ogilvie* that the passage of an election does not render moot substantial legal questions still alive for all future elections?

Illinois law requires independent candidates and candidates of new political parties, in order to secure ballot access, to obtain petition signatures of not less than 5% of the number of voters who voted at the last general election in the political subdivision. Appellants maintain that the issues in this cause have previously been decided by the U.S. Supreme Court in *Jackson* v. *Ogilvie,* 325 F. Supp. 864 (N.D. Ill. 1971), *aff'd* 403 U.S. 925 (1971), and deserve the effect of the doctrines of *stare decisis* and "law of the case."

Appellees, *Socialist Workers Party, et al.* and *Gerald Rose, et al.,* attempt to persuade this Court to refrain from reviewing the case on the basis that the decision of *Jackson* v. *Ogilvie, supra,* is to be distinguished from the case at bar since "Plaintiffs [Appellees] present an attack on the statute that had not been raised or decided by the Court in *Jackson.*" (Motion To Affirm In Part And Dismiss In Part, p. 2) Nothing could be further from the truth.

As for the raising of the issues regarding the signature requirements for independent and new political party candidates seeking local office, as they relate to such candidates seeking statewide office, the Attorney General of the State of Illinois in *Jackson* v. *Ogilvie, supra,* specifically proffered this argument in the U.S. District Court. In his memorandum he argued:

> "It may also be remembered that it is even more difficult for an independent candidate to obtain signatures than it would be for an independent party. Yet, a whole new state political party need only 25,000 signatures throughout the entire state for state office (10-2), while a single independent candidate for only the office of Mayor of Chicago needs almost 60,000 signatures. This also is an invidious discrimination against one seeking the office of Mayor of Chicago." (Attorney General's Memorandum, p. 3)

Moreover the Attorney General's argument was also included in Plaintiff Jackson's Supreme Court Brief and Appendix.

With respect to the resolution of the issue on the constitutionality of the 5% minimum signature requirement for independent and new political party candidates, the *Jackson* Court states:

> "The question more pointedly is can the State limit the availability of the ballot to only those candidates who evidenced the support of 5% of the electorate? We think it can." (325 F. Supp., at 868).

Appellees would have this Court believe that the *Jackson* decision dealt solely with the equal protection issue in the narrow context of independent signature requirements, as they relate to the political party signature requirements. The *Jackson* opinion leaves no doubt that the equal

protection issue was decided on the grounds that the 5% figure satisfied a compelling state interest and not merely in relational terms as reconstructed by Appellees.[1]

In a further attempt to confuse the issues, Appellees refer to the case of *Lendall* v. *Jernigan*, 424 F. Supp. 951 (W.D. Ark., 1977), by arguing this case on all fours with the case below. They maintain that the District Court in Arkansas invalidated a 10% signature requirement for independent candidates because a state senatorial candidate was required to file more signatures from a less populated legislative district than were he a municipal candidate in a more populous area.

In *Lendall*, the Court invalidated the 10% requirement owing to the state's failure to present any evidence which would support the argument that the 10% requirement was necessary to vindicate any of the state's interests. Hence, *Lendall* cannot apply to the case at bar since the Illinois signature requirement of 5% is one-half of the 10% signature requirement in *Lendall*. Moreover, in the Court of Appeal's opinion below where is there any indication of reliance upon *Lendall* as suggested by Appellees?

On the issue of mootness, Appellees would have this Honorable Court, in effect, sanction judicial action directly violative of the established doctrines of this Court.

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1. Appellees even go so far as to misrepresent the minimum signature requirement, 65,000, when 35,947 was stipulated by the parties as the correct 5% figure as applied to the mayoral election in question. (Motion To Affirm In Part And Dismiss In Part, pp. 8-9)

In fact, in *Jackson*, the 5% figure amounted to 58,000 signatures or 22,053 more signatures than required in the case below.

The courts below, while paying lip service to the judicial standard of *Moore* v. *Ogilvie*, 394 U.S. 814, 89 S. Ct. 1493 (1969), declined to review the issue of an election authority unilaterally favoring one political party by lowering signature requirements in violation of state law. To sustain the mootness argument in light of the facts below would set a precedent in the 7th Judicial Circuit that substantial legal questions can in fact be mooted by the passage of an election.

CONCLUSION

The District Court and the Court of Appeals were bound by the doctrines of "law of the case" and *stare decisis*. By decreeing that 25,000 signatures (further reduced to 20,000 signatures by agreement of the Appellees) would be the maximum number of signatures that may be required of independent and new political party candidates, the court below issued rulings in direct conflict with the mandate of this Honorable Court. For these and the foregoing reasons, probable jurisdiction should be noted to review the decision of the 7th Circuit Court of Appeals, rendered on December 9, 1977.

Respectfully submitted,

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